JAMES V. JOYCE
(ON RECONSIDERATION)

IBLA 79-292
42 IBLA 383 Decided July 30, 1981

Reconsideration of prior decision, 42 IBLA 383, holding that the filing of a notice of intent to hold or proof of assessment work required by section 314(a) of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744(a) (1976), must be made within each calendar year following (1) the calendar year of location for post-FLPMA claims, and (2) the calendar year of recordation for pre-FLPMA claims.

Prior decision reaffirmed.

1. Federal Land Policy and Management Act of 1976: Assessment Work -- Mining Claims: Assessment Work

   Where the requirement of filing proof of assessment work or a notice of intention to hold applies, such filing must be made within each calendar year, i.e., on or after Jan. 1 and on or before Dec. 30. General Electric Co., 55 IBLA 185 (1981), overruled to extent inconsistent.

APPEARANCES: James V. Joyce, pro se.

OPINION BY ADMINISTRATIVE JUDGE BURSKI

By decision dated September 11, 1979, styled James V. Joyce, 42 IBLA 383, this Board affirmed a decision of the Idaho State Office, Bureau of Land Management (BLM), declaring the El Torro Nos. 1 to 14 mining claims located prior to October 21, 1976, abandoned and void for failure to file either proof of assessment work or notice of intent to hold within calendar year 1978. The Board noted that appellant alleged that he had filed proof of assessment work for both the 1977 and 1978 assessment years when he recorded the claims on October 7, 1977. The Board held, however, that the statute and the regulations required filing in the year following the year of recording. 45 IBLA at 387.

Subsequent to our decision, questions arose as to the correctness of this holding. They were generated both within the Board and among various individuals who practice before this Department. Accordingly, on April 4, 1980, the Board sua sponte issued an order notifying the parties that it would reconsider its decision.

On reconsideration, however, we remain convinced that our original decision was correct. Much of the controversy surrounding this case has been generated by the statutory phrasing of the filing requirement. Thus, the statute provides: "The owner of an unpatented lode or placer mining claim located prior to October 21, 1976, shall, within the three-year period following October 21, 1976, and prior to December 31 of each year thereafter, file the instruments required by paragraphs (1) and (2) of this subsection." 43 U.S.C. § 1744(a)(1976) (emphasis supplied). 1/ Various individuals have pointed to the phrase "prior to" and, noting that the assessment year begins on noon September 1, have argued that an individual could perform and file what would be known as "the previous assessment year's" proof 2/ in the last four months of calendar year preceeding the calendar year in which they should be filed and that such a filing would be "prior to" the end of that calendar year.

This analysis, however, is flawed on a number of levels. First of all, it distorts the purpose of the recordation law. Section 314 is not an assessment work statute; it is a recordation statute. Such assessment requirements as exist are found in 30 U.S.C. § 28 (1976). FLPMA neither changes nor enlarges the type of work which may be done to fulfill the assessment work requirements of the mining law.

The purpose of 30 U.S.C. § 28 (1976), as the Supreme Court of Utah has recently noted, is to assure diligent development of mining claims and to prevent thwarting of that purpose by the mere location of claims to tie up land and let it stay idle. Powell v. Atlas Corp., 615 P.2d 1225 (Utah 1980). The purpose of 43 U.S.C. § 1744 (1976), however, is to inform the Department of those claims existing on public lands and of the continued interest of the claimant in such claims. Thus, 43 U.S.C. § 1744(b) requires the filing of notices of location or such subsidiary information sufficient to locate the claim

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1/ The next sentence relates to post-FLPMA claims and requires similar filings "prior to December 31 of each year following the calendar year in which the said claim was located." (Emphasis supplied.)

2/ The "preceeding assessment year" is a regulatory, not a statutory term. The statute speaks only to the filing of assessment work not to the filing of any specific year's assessment work. Whether the filing of proof of labor for the wrong assessment year would be a curable defect under the Tenth Circuit's analysis in Topaz Beryllium Co. v. United States, No. 79-2255 (filed May 21, 1981), we need not now decide.

on the ground in these instances in which the original location notices are unavailable. See Marvin E. Brown, 52 IBLA 44, 47-48 (1981). Section 1744(a) requires the filing of either notices of intent to hold or proof of assessment work performed each year following either location (post-FLPMA) or recordation (pre-FLPMA). 3/ This filing is designed to keep the Department apprised of the fact that the claims are still active.

Secondly, the argument is based on two words whose meaning is by no means clear, i.e., "prior to." Clearly it means before. But the full phrase is actually "prior to December 31 of each year thereafter." Certainly, this phrase is as easily amenable of an interpretation that requires filing within the calendar year as it is of a construction that it requires only filing before the end of a specific calendar year and that filing in a previous calendar year is, of necessity, filing prior to December 31 of the succeeding calendar year.

Any ambiguity this phraseology may create, however, is clearly dissipated when recourse is made to the legislative history of this provision. The language of section 314 of FLPMA originated, with a few changes not relevant to this issue, in section 207 of H.R. 13777, 94th Cong., 2d Sess. (1976). Particularly instructive of the intended meaning of this phraseology is H.R. Rep. No. 94-1163, 94th Cong., 2d Sess., filed May 15, 1976, which accompanied that bill to the floor. The drafters of the recordation provision described its intended effect as follows:

> Section 207 -- Recordation of Mining Claims and Abandonment
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> (a) Within three years and each year thereafter, the owner of an unpatented mining claim located prior to this Act must file in the appropriate office of record (County Recorders Office) and with the Bureau of Land Management, an affidavit of assessment work. For claims located after this Act, similar material must be filed annually. [Emphasis supplied.]

H.R. Rep. No. 94-1163 at 11. Not only does the first sentence clearly indicate that the "within" was meant to modify "each year thereafter," the second sentence expressly states that the required material must be filed on an annual basis.

3/ It must be recognized that for pre-FLPMA claims, the initial proof of assessment work or notice of intention to hold could be filed no later than Oct. 22, 1975.

Finally, a construction of the statute which permitted the early filing of proof of assessment work would also, by the same logic, permit the early filing of notices of intent to hold the claim. 4/ If we assume, as has been argued to the Board, 5/ that claimants have an election to file either proof of assessment or a notice of intent to hold, regardless of whether the necessity of performing assessment work under 30 U.S.C. § 28 (1976) has accrued, adoption of a system which would permit the early filing of the assessment work proofs would establish a procedure which would clearly nullify the animating rationale of the recordation provisions. Because of the nonsynchronized nature of the assessment and calendar year, an individual might be able to effectively skip filing proof of assessment every other year under such a system. The filing of notices of intent, because they would relate to purely subjective considerations, however, could theoretically obviate the need for filing in 5 or 20 years.

Thus, an individual claimant could file in one year separate documents manifesting an intent to hold the claim for each of the next 5 years. Each filing would clearly be made prior to the end of the year which it referenced. No document would violate the proscriptions of 18 U.S.C. § 1001 (1976), since, at the time of making each, the claimant did indeed have the subjective intent to hold the claims. Such a system, however, would clearly thwart the purpose of the Recordation Act, viz., keeping the Department informed of those claims which continue to be actively pursued. And what would be true for 5 years must, perforce of logic, be true for 20. Indeed, individuals would be well advised to make such multiple filings in view of the exacting and unavoidable consequences that accompany a failure to file timely. It is inconceivable that Congress meant to foster a system which would actually deprive the Department of the information that recordation is supposed to supply and we expressly refuse to adopt such an interpretation.

We are aware that our recent decision in General Electric Co., 55 IBLA 185 (1981) may be the source of some confusion. That decision should have been predicated on the narrow ground that the State Office had erred in stating that no filings had been made for the 1980 assessment year. While this fact was mentioned, the decision went on to say that filing in October 1979 would constitute compliance with the filing requirements for the 1980 calendar year. That statement is wrong. Thus, to the extent that General Electric Co., supra, contemplates such a result, it is hereby expressly overruled.

4/ This is not to say that the filing of evidence of assessment work performed during the current assessment year is prohibited. However, such a filing will not relieve the claimant from any filing at all during the subsequent calendar year, for which he must file a notice of intent or refile evidence of the work done during the previous assessment year.

5/ See Alaskamin Co., 49 IBLA 49A (order issued May 29, 1981).

In summation, we hold that where the requirement of filing proof of assessment work or a notice of intention to hold applies, such filing must be made within each calendar year, i.e., on or after January 1, and on or before December 30.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the prior decision of the Board, reported at 42 IBLA 383, is reaffirmed.

James L. Burski
Administrative Judge

We concur:

Edward W. Stuebing
Administrative Judge

Douglas E. Henriques
Administrative Judge